

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
DONOVAN AND DEBRA BERGESON
ZONING MAP AMENDMENT REPORT (#FZC-16-11)
OCTOBER 26, 2016

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by Carver Engineering, on behalf of Donovan and Debra Bergeson, for a zoning map amendment within the Highway 93 North Zoning District. The proposed amendment, if approved, would change the zoning of the subject property from '*SAG-10 Suburban Agricultural*' to '*I-1H Light Industrial-Highway*.'

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on November 9, 2016 at 6:00 P.M. in 2nd Floor Conference Room of the Earl Bennett, 1035 1st Ave West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment.

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located at 40 11th Street West in Kalispell. Prior to the Commissioner's public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Flathead County Clerk and Records Office at 800 South Main Street in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Planning Board

This space will contain an update regarding the November 9, 2016 Flathead County Planning Board review of the proposal.

B. Commission

This space will contain an update regarding the Flathead County Commissioners review of the proposal.

II. GENERAL INFORMATION

A. Application Personnel

i. Owner

Donovan and Debra Bergeson
255 Scenic Ridge Road
Kalispell, MT 59901

ii. Technical Assistance

Carver Engineering
1995 3rd Ave E
Kalispell, MT 59901

B. Subject Property Location and Legal Description

The subject property is located 255 Scenic Ridge Road, north of Kalispell (see Figure 1 below). The property is approximately 11.8 acres in size and can legally be described as a:

Tract of land in the Southeast Quarter of the Northeast Quarter of Section 1, Township 29 N, Range 22 W, P.M.M., Flathead County, Montana, more particularly described as follows:

Beginning at a point that bears North a distance of 690.00 feet and West a distance of 174.40 feet from the Southeast corner of said Southeast Quarter of the Northeast Quarter, Section 1; thence

West a distance of 1107.60 feet to the Easterly right of way of Highway 93; thence

North along said right of way a distance of 627.50 feet to the North line of said Southeast Quarter of the Northeast Quarter of Section 1; thence

East along said North line a distance of 787.90 feet to the Westerly right of way of the County road; thence

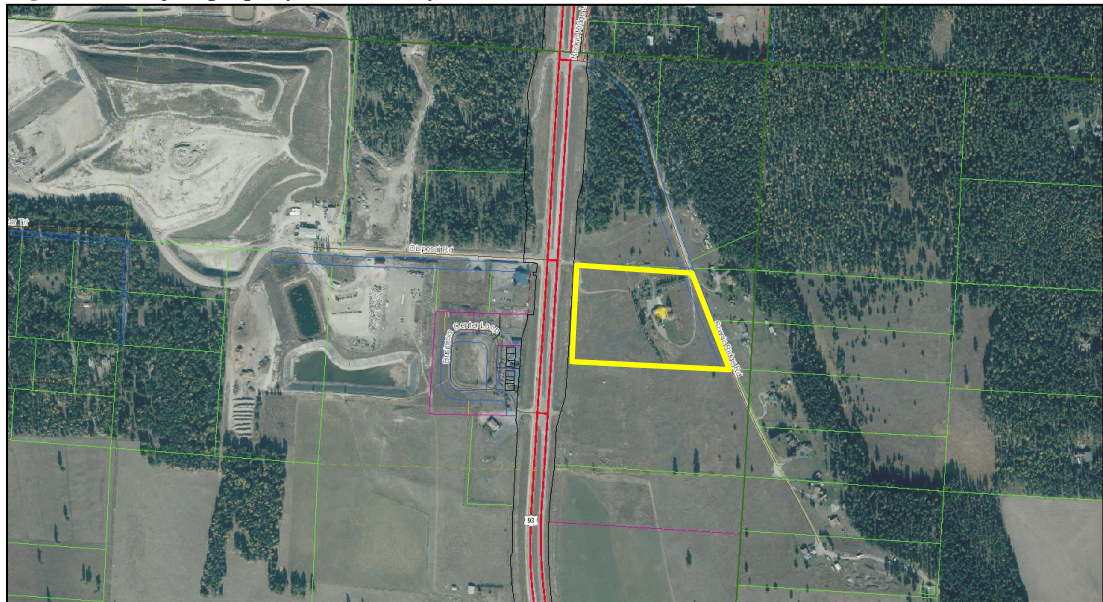
Southerly along said Westerly right of way of the county road a distance of 706.40 feet to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the State of Montana for highway purposes by Bargain and Sale Deed, recorded May 7, 1991 as Document No. 91-127-16050, records of Flathead County, Montana, and also

EXCEPTING THEREFROM that portion conveyed to the State of Montana for highway purposes by Bargain and Sale Deed, recorded July 18, 2006 as Document No. 2006-199-08100, records of Flathead County, Montana.

Also EXCEPTING THEREFROM rights of the public in and to that portion of the premises known as Scenic Ridge Road.

Figure 1: Subject property outlined in yellow



C. Proposed Zoning Map Amendment

The subject property is located within the Highway 93 North Zoning District and is currently zoned 'SAG-10 Suburban Agricultural' (see Figure 2 below). As depicted in Figure 3 below, the applicant has requested the zoning map amendment for the property to zone it 'I-1H Light Industrial-Highway.' Per Section 3.07 of the Flathead County Zoning Regulations (FCZR), SAG-10 is 'A district to provide and preserve

agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.'

The I-1H designation is defined in Section 3.28 FCZR as, 'A district to provide areas for light industrial uses and service uses that typically do not create objectionable by-products (such as dirt, noise, glare, heat, odors, smoke, etc.), which extend beyond the lot lines. It is also intended that the encroachment of nonindustrial or non-specified commercial uses within the district be prevented other than those listed herein. This district is intended for industrial areas which are located along state and federal highways and contain greater levels of performance and mitigation utilizing increased setbacks, landscape buffering, access control and signage restriction for the purpose of protecting the County's major travel ways from unnecessary encroachments, limiting access points to encourage improved traffic flows and to preserve scenic corridors and entrance ways to major communities.'

Figure 2: Current zoning applicable to subject property (highlighted in blue)

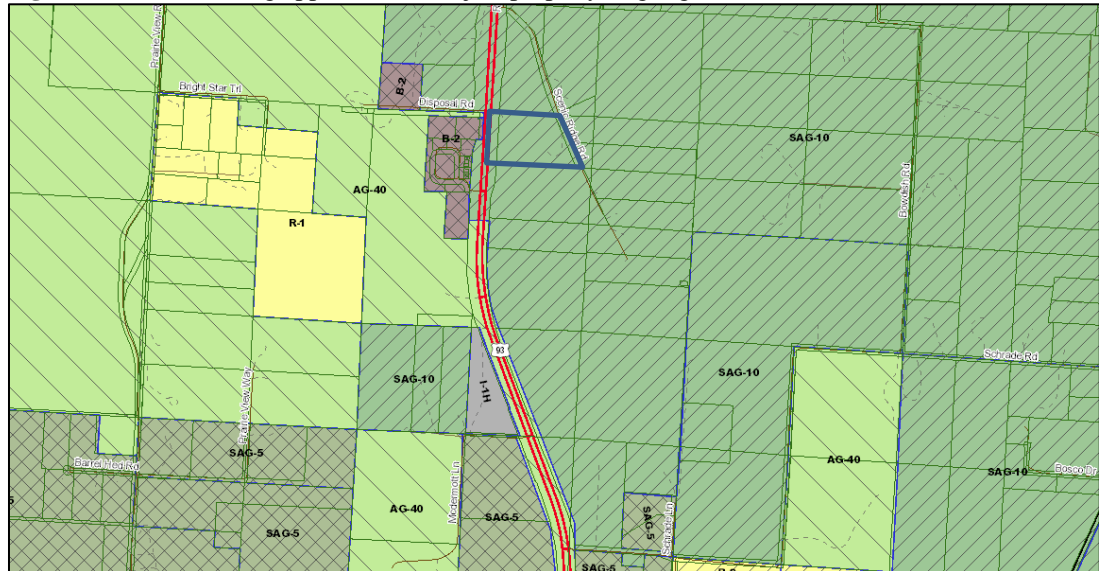


Figure 3: Proposed zoning on the subject property (highlighted in blue)



D. General Character of and Reason for Amendment

The property is located between U.S Highway 93 and Scenic Ridge Road. The property is on a slope with low point being along the highway and high point along Scenic Ridge Road. The existing house is located on a relatively flat area closer to Scenic Ridge Road and surrounded by trees and bushes. Also on the property is a gazebo, a shed and various other accessory buildings. The property contains a driveway off both Highway 93 and Scenic Ridge Road.

The application states the reason for the request as, “The current property owner wishes to use the part of the tract fronting the highway as an RV sales lot, which is more consistent with other adjacent uses rather than the present suburban agricultural zoning designation. Zoning of other nearby property also fronting the highway recently was changed to I-1H zoning. An additional commercial use (dog kennel) was built this year on property to the south that fronts Highway 93”

Figure 4: Aerial view of subject property (outlined in yellow)



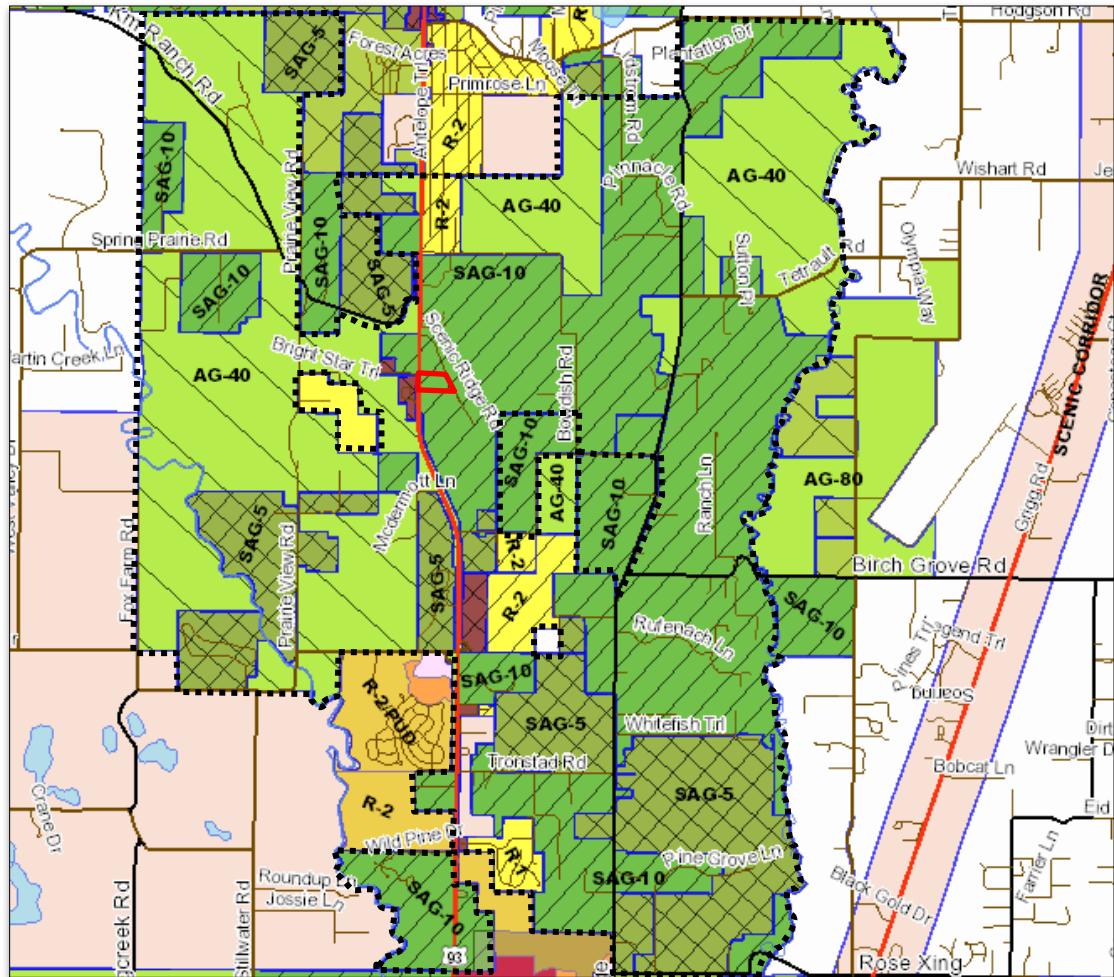
E. Adjacent Zoning and Character of the Overall Zoning District

The property is located within the Highway 93 North Zoning District, which is a 12,780 acre zoning district that covers much of the area between Whitefish and Kalispell. Because of that staff looked at the zoning within a half mile of the subject property and further north and south along Highway 93, as those are the most relevant to the subject property. The character of the Highway 93 corridor is a mixture of suburban agricultural zoning, agricultural, highway industrial, commercial and residential. The property is located along U.S. Highway 93 and to the east of the Flathead County Landfill and several businesses. The landfill and those businesses are zoned SAG-10 and B-2.

To the north, south and east the zoning is SAG-10. Further to the south along the highway is AG-40 and I-1H zoning, followed by SAG-5, B-2 and B-3 zoning less than 2 miles to the south. The B-2 and B-3 zoning are located across the highway from each other. And further to the north along the highway are SAG-5, AG-40, R-2 and some B-2 districts. The B-2 is located on both sides of the highway approximately 2.5 miles to the north.

The City of Kalispell extends to Church Drive, 2 miles south of the property (Silverbrook Subdivision). The zoning within the Silverbrook Subdivision is a mixture of B-1/PUD at the corner of Church and Highway 93 and R-4/PUD and R-2/PUD.

Figure 5: Highway 93 North Zoning District (outlined with dashed black line & subject property outlined in red)



F. Public Services and Facilities

Sewer:	N/A
Water:	N/A
Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy
Telephone:	CenturyTel
Schools:	Whitefish School District Whitefish High School District
Fire:	West Valley Fire District
Police:	Flathead County Sheriff

G. Criteria Used for Evaluation of Proposed Amendment

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing zoning amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

H. Compliance With Public Notice Requirements

Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on October 21, 2016. Legal notice of the Planning Board public hearing on this application was published in the October 23, 2016 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A.]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed change, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

I. Agency Referrals

Referrals were sent to the following agencies on September 7, 2016:

- Bonneville Power Administration
- City of Kalispell Planning Department
- City of Whitefish Planning Department
- West Valley Fire District
- Montana Fish, Wildlife and Parks
- Flathead City-County Health Department
- Flathead County Road and Bridge Department
- Flathead County Sheriff
- Flathead County Solid Waste
- Flathead County Weeds and Parks Department
- Montana Department of Transportation

III. COMMENTS RECEIVED

A. Public Comments

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for November 9, 2016 and/or the Commissioner's Public Hearing. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

B. Agency Comments

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Bonneville Power Administration
 - Comment: "In reviewing the proposed plan, it appears this request will not affect any BPA facilities located within this area. BPA does not have any objections to the approval of this request at this time." Email dated September 12, 2016.
- City of Kalispell Planning Department

- Comment: “Thank you for the opportunity to comment on the proposed zone change. We would recommend the proposed zone change of I-1 (Light Industrial) be denied based on the following issues and concerns.

“1. The Highway 93 North zoning district, was specifically enacted by the property owners in the middle 1990’s to avoid the spread of commercial and industrial development along US 93. This effort is at the heart of protecting our scenic corridors along highways (note the property is located on Scenic Ridge Road), a view championed by greater community. Rezoning the subject property I-1 would take all future development control away from the county, which could lead to more strip commercial and industrial development.

“2. Preventing the continuation of one long commercial/industrial strip from Kalispell to Whitefish along Highway 93 North is a community-wide priority. There is ample commercial development potential currently along Highway 93 within the County.

“3. MDT has already indicated in the last several Transportation Impact Studies for users along this stretch of Highway 93 that full access approaches for commercial users are not available. Anything less than a full access approach onto Highway 93 would hinder future business access and success (i.e. right-in right-out only access) and if approved will hinder the free flowing capacities of Highway 93, a 4 lane road that the greater Flathead has worked hard to develop, and must work harder to maintain in a free flowing configuration. There does not appear to be a coordinated effort to mitigate traffic impacts to the adjacent highway and there is no perceived community benefit.

“4. The signaling out of properties for a type of zoning which is not generally shared or planned for within an existing zoning district and not supported by a growth policy is arbitrary and generally considered spot zoning. Spot zoning is generally considered illegal and is almost always considered ill-advisable. Additionally, using the landfill as justification for industrial zoning is not good long range planning. Landfill development is not indicative of industrial development, as they have limited lifespan and often turn into future recreational uses.

“Adding to the commercial and industrial zoning inventory at this time and at this location is not appropriate based on the points above. We would encourage the Flathead County Planning Board and Board of County Commissioners to consider the above comments and possible negative effects approving a I-1 Zoning District would have along this portion of Highway 93 North.” Letter dated September 20, 2016.

- Flathead County Solid Waste District
 - Comment: “The District views no negative impacts at this time for the zoning request.

“The District requests that all solid waste generated at the proposed location be hauled by a private hauler. Evergreen is the licensed (PSC) Public Service Commission private hauler in this area.” Letter dated September 13, 2016.

- Flathead Environmental Health Department
 - Comment: “The proposed use of the property may require additional septic capacity for the proposed RV sales business. The property was not subject to review under the Sanitation in Subdivisions Act. Please contact Environmental Health Services regarding required water and wastewater treatment facilities.” Letter dated September 14, 2016.
- Flathead County Road & Bridge Department
 - Comment: “At this point the County Road Department does not have any comments on this request.” Letter dated September 13, 2016.
- Montana Department of Transportation
 - Comment: “The property is located between Kalispell and Whitefish, on the east side of US 93, directly across from the Flathead County Landfill. The proposal will have direct access to Highway 93 via an existing approach.

“The owner’s representative has contacted MDT about the proposal. A review of the right of way/access control documents did verify that the existing access was granted as a private approach which could allow for the proposed change in use. As this will be a change in use of an existing access then the owner will need to obtain a new updated approach permit from MDT.” Email dated September 23, 2016.

IV. EVALUATION OF PROPOSED AMENDMENT

A. Build Out Analysis

Once a specific zoning designation is applied in a certain area there are certain land uses that are permitted or conditionally permitted. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those uses. The build-out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

i. Current Zoning

The proposed zoning map amendment would change the zoning designation on the subject property from ‘SAG-10 Suburban Agricultural.’ SAG-10 is defined in Section 3.07.010 FCZR as, ‘A *district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will*

be minimized, and to provide areas of estate-type residential development.’ The following is a list of permitted uses in an SAG-10 zone:

1. *Agricultural/horticultural/silvicultural use.*
2. *Cellular tower.*
3. *Class A and Class B manufactured home.*
4. *Cluster housing).*
5. *Dairy products processing, bottling, and distribution.*
6. *Day care home.*
7. *Dwelling, single-family.*
8. *Dwelling unit, accessory (ADU).*
9. *Guest house.*
10. *Home occupation.*
11. *Homeowners park and beaches.*
12. *Livestock*
13. *Nursery, landscaping materials.*
14. *Park and publicly owned recreational facility.*
15. *Produce stand.*
16. *Public transportation shelter station.*
17. *Public utility service installation.*
18. *Ranch employee housing.*
19. *Riding academy, rodeo arena.*
20. *Stable, public and private.*

The following uses are listed as conditional uses in an SAG-10 zone. An asterisk designates conditional uses that may be reviewed administratively:

1. *Airfield.*
2. *Aircraft hangars when in association with properties within or adjoining an airport/landing field.**
3. *Animal hospital, veterinary clinic.*
4. *Bed and breakfast establishment.*
5. *Camp and retreat center.*
6. *Caretaker’s facility.**
7. *Cemetery, mausoleum, columbarium, crematorium.*
8. *Church and other place of worship.*
9. *Community center building operated by a non-profit agency.*
10. *Community residential facility.***
11. *Contractor’s storage yard.**
12. *Dwelling, family hardship.**
13. *Electrical distribution station.*
14. *Extractive industry.*
15. *Golf course.*
16. *Golf driving range.*
17. *Kennel, commercial (See Chapter IV – Conditional Use Standards).**

18. *Manufactured home park.*
19. *Recreational facility, low-impact.*
20. *School, primary and secondary.*
21. *Temporary building or structure.**
22. *Water and sewage treatment plant.*
23. *Water storage facility.*

The bulk and dimensional standards under SAG-10 zoning has a 20 foot setback from front, rear, side-corner and side boundary line for principal structures and a setback of 20 feet for the front and side-corner and 5 feet from the rear and side for accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials. The permitted lot coverage is 20% and a maximum height of 35 feet. And in SAG-10 no parcel or lot shall have an average depth greater than three times its average width unless the average lot width is more than 300 feet.

The SAG-10 zoning requires a minimum lot area of 10 acres. The subject property totals 11.8 acres therefore; no additional lots could be created within the current zoning.

ii. **Proposed Zoning**

As previously stated, the applicant is proposing '*I-1H Light Industrial-Highway*' zoning. I-1H is defined in Section 3.28.010 FCZR as, '*A district to provide areas for light industrial uses and service uses that typically do not create objectionable by-products (such as dirt, noise, glare, heat, odors, smoke, etc.), which extend beyond the lot lines. It is also intended that the encroachment of nonindustrial or non-specified commercial uses within the district be prevented other than those listed herein. This district is intended for industrial areas which are located along state and federal highways and contain greater levels of performance and mitigation utilizing increased setbacks, landscape buffering, access control and signage restriction for the purpose of protecting the County's major travel ways from unnecessary encroachments, limiting access points to encourage improved traffic flows and to preserve scenic corridors and entrance ways to major communities.*' The following is a list of permitted uses in an I-1H zone:

1. *Accessory apartments.*
2. *Animal related services such as pet grooming and training, veterinary clinic and animal hospital, taxidermy, aviary and farrier services.*
3. *Art foundry.*
4. *Auction yard, without livestock.*
5. *Automobile, RV, watercraft (new and used) and accessory sales.*
6. *Automobile service station.*
7. *Boat sales, new and used.*
8. *Bus station.*
9. *Car wash.*
10. *Cellular tower.*
11. *Church and other place of worship.*

12. *Contractors' storage yard and building supply outlet.*
13. *Day care center.*
14. *Direct mailing and telemarketing.*
15. *Farm equipment sales.*
16. *Feed, seed and farm supply, including grain elevators.*
17. *Financial institution.*
18. *Food store, supermarket, and delicatessen.*
19. *Health club.*
20. *Heating, ventilation, air conditioning and plumbing sales, service and repair.*
21. *Heavy equipment sales, rental and service.*
22. *High tech industrial business.*
23. *Hotel, motel.*
24. *Janitorial service.*
25. *Light assembly and manufacturing, fabrication and processing, repairing, packing, storage facilities, warehousing and distribution of products and equipment provided that such uses do not produce objectionable impacts beyond the lot lines and do not involve materials that are explosive, hazardous or toxic. Examples of such uses would include but are not limited to the following:*
 - A. *Automobile, bus, truck, boat and equipment washing, detailing, repairing, service and storage.*
 - B. *Manufacture of products such as clothing; furniture; fabricated wood, glass, plastic and metal products; leather and leather goods; medical, dental and optical products and equipment and boat building.*
 - C. *Processing and manufacturing of food such as baked goods, dairy products, alcoholic beverages and beverage manufacturing and bottling.*
 - D. *Repair of equipment and consumer items such as appliances, clocks and watches, lawn and garden equipment, computers, televisions, shoes, and furniture.*
 - E. *Storage and warehousing such as mini-storage, boat and vehicle storage.*
26. *Lodge and fraternal and social organization, provided that any such establishment shall not be conducted primarily for gain.*
27. *Lumber yard, building materials; storage and sales.*
28. *Manufactured home sales and storage.*
29. *Nursery and landscape materials, wholesale and retail.*
30. *Office.*
31. *Parcel delivery service.*
32. *Park and publicly owned recreational facilities.*
33. *Public transportation shelter station.*
34. *Public utility service installation. (A minimum of five feet of landscaped area shall surround such building or structure.)*
35. *Quasi-public building (fire station, government offices, etc.)*
36. *Radio and television broadcast station.*

37. *Recreational facility, high-impact.*
38. *Recreational facility, low-impact.*
39. *Recreational vehicle park.*
40. *Recycling drop-off station.*
41. *Rental store and yard.*
42. *Research laboratory and institution.*
43. *Retail sales and services.*
44. *Restaurant.*
45. *Security guard service.*
46. *Theater, housed in permanent indoor structures.*
47. *Tire recapping and retreading.*
48. *Truck terminal.*
49. *Wholesale trade and warehousing.*

The following uses are listed as conditional uses in an 'I-1H' zone. An asterisk designates conditional uses that may be reviewed administratively:

1. *Auction yard, livestock.*
2. *College, business school, trade school, music conservatory, dance school.*
3. *Commercial caretaker's facility in a detached accessory building in conjunction with a business.**
4. *Commercial recreation area.*
5. *Communication tower/mast.*
6. *Convention hall facility.*
7. *Electrical distribution system.*
8. *Golf driving range and putting course.*
9. *Landfill, sanitary for disposal of garbage and trash.*
10. *Mini-storage, RV storage.*
11. *Mortuary.*
12. *Radio and television broadcast station.*
13. *Recycling processing plant.*
14. *Tavern.*
15. *Temporary building or structure.**
16. *Water storage facility.*

The bulk and dimensional standards under I-1H zoning requires a setback from the boundary line of 20 feet for the front, rear and side-corner and 10 feet for the side for any structure. A 100 foot setback is required on lots with direct access onto a highway and 35 feet with no access to a highway and 50 feet on lots with direct access onto a county road. Additionally a setback of 50 feet is required from the high water mark of streams. The I-1H zone has no permitted lot coverage, a maximum height of 40 feet and a minimum lot width of 150 feet.

The I-1H zone requires a minimum lot area of 1 acre. The subject property totals 11.8 acres and in typical subdivisions 30% of the lot is dedicated to infrastructure, leaving approximately 70% for lots. Therefore, approximately 8 lots could be created under the proposed zoning.

In summary, the requested zone change from SAG-10 to I-1H has the potential to increase density through subsequent division in the future. The bulk and dimensional requirements vary from SAG-10 to I-1H and the amendment would introduce uses to the subject.

B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

i. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R).

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as 'Suburban Agricultural.' The proposed 'I-1H Light Industrial-Highway' zoning classification would appear to contrast with the current designations. However, Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, "This map depicts areas of Flathead County that are legally designated for particular land uses. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plans. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map." Staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on policies, rather than maps in the document.

The Growth Policy states, *"Industrial parks and centers provide a regional service by serving a growing economy with needed industrial space and co-locating potentially hazardous land uses in areas that have been designated as being minimally impacted by odors, heavy truck traffic, noise, etc. [...] It is important to locate industrial uses close enough to services to increase efficiency but far enough from established residential uses to avoid objectionable impacts."*

The property is located across the highway from the Flathead County Landfill and along Highway 93, an area that has the potential to be minimally impacted by heavy traffic and odors that could be associated with light industrial uses, as the Landfill generates odors and heavy truck traffic.

Following is a consideration of goals and policies which appear to be applicable to the proposed zone change, to determine if the proposal complies with the Growth Policy:

- ❖ **G.2** – *Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
- ❖ **G.5** – *Adequate industrial land in areas that are close enough to goods and services to be efficient but far enough from other uses to offset objectionable impacts to the human and natural environment.*
 - The property is located along Highway 93 less than 2 miles from the City of Kalispell and approximately 5 miles south of the City of Whitefish. Because the property is located along the highway the industrial use could have a negative impact on scenic views. However the I-1H zone requires greater setbacks for properties located along a highway, landscape buffering and other design criteria to minimize visual impacts.
- **P.5.1** – *Match requirements of industrial land uses (such as human resources, adequate water supply, suitable road networks) and areas of Flathead County where those requirements can best be met.*
- **P.5.2** – *Promote industrial parks and centers that take advantage of infrastructure and minimize impacts to the environment or adjacent land uses.*
 - According to the application, “The proposed change will create an industrial zone adjacent to Highway 93, a major transportation corridor providing a level of service.” The property is located approximately midway between the cities of Whitefish and Kalispell, along Highway 93 in a centralized area of the county.
- **P.5.5** – *Restrict industrial uses that cannot be mitigated near incompatible uses such as residential, schools, environmentally sensitive areas such as wetlands, floodplains, riparian areas, areas of shallow groundwater, etc.*
 - The applicant is proposing an industrial zone adjacent to the Flathead County Landfill, business zoning and agricultural. The property is not located within an environmentally sensitive area and not located next to a school.
- ❖ **G.14** – *Solid waste collection facility operation and landfill expansion free from land use conflicts with adjacent property owners.*
 - **P.14.1** – *Identify a 1,320 foot buffer surrounding the landfill and designate this area only for those land uses compatible with current and future landfill activities. Compatible use types such as industrial should be encouraged in this buffer.*
 - Comments from the City of Kalispell state, “4. The signaling out of properties for a type of zoning which is not generally shared or planned for within an existing zoning district and not supported by a growth policy is arbitrary and generally considered spot zoning.

Spot zoning is generally considered illegal and is almost always considered ill-advisable. Additionally, using the landfill as justification for industrial zoning is not good long range planning. Landfill development is not indicative of industrial development, as they have limited lifespan and often turn into future recreational uses.”

- The majority of the subject property is located within the 1,320 foot buffer surrounding the landfill. According to the application, “At its northern end, the western boundary of Tract 5D is contiguous with the Flathead County Landfill property, which is located directly across Highway 93. Tract 5D measures roughly 1,006 feet east to west at its widest point (south boundary), and consequently the entire tract is within the recommended ¼ mile landfill buffer area.”
- ❖ **G.21** – *A healthy and vibrant Flathead County economy that provides diversity and living-wage job opportunities and is comprised of sustainable economic activities and private sector investment.*
 - **P.21.1** – *Provide adequate land area designated for commercial and industrial use to promote affordability, creating entrepreneurialism and/or businesses relocation to Flathead County.*
 - According to the application, “The proposed zone will allow the owners to undertake an entrepreneurial venture by relocating their RV sales lot closer to home.” The proposed industrial zoning has the potential to allow for the expansion of an existing locally owned industrial use which has the potential to create living-wage jobs.
 - **P.22.2** – *Promote business centers and industrial parks in areas served by sufficient infrastructure with consideration to proximity to population densities.*
 - The proposed industrial zoning is located midway between the cities of Whitefish and Kalispell along Highway 93.
- ❖ **G.32** – *Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*
- ❖ **G.33** – *Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*
 - This report contains discussion on the adequacy of emergency service below.

Finding #1: The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text generally support the request, the property is across the highway from the County Landfill and within the 1,320 foot buffer, is located between the cities of Whitefish and Kalispell along Highway 93, the I-1H zone requires greater setbacks for properties located along a highway, landscape buffering and other design criteria to minimize visual impacts and is not located within in an environmentally sensitive area and not located next to a school.

ii. Whether the proposed map amendment is designed to:

1. Secure safety from fire and other dangers;

The subject property is located within the West Valley Fire District. The nearest fire and emergency response center is located approximately 4.0 road miles northeast of the property on Whitefish Stage and the property is located approximately 4.5 road miles northwest of the closest West Valley Fire Station, also located on Whitefish Stage. The West Valley Fire Department, which did not provide comments on this proposal, would respond in the event of a fire or medical emergency. The applicant states, "Access to the proposed new industrial use would be directly off Highway 93, a paved four lane state highway. Access to the east end of the property would be directly off of Scenic Ridge Road, a gravel county road. Either road is available full time for fire and emergency access."

The subject property is located within the Wildland Urban Interface WUI and a county wide priority area. The subject property is not heavily forested but is located adjacent to heavily forested areas of the county. The application states, "Aside from the landscaping trees and windbreaks around the house site on the eastern part of the tract, the property is not in a forested area and is mostly native grasses."

According to FEMA FIRM Panel 30029C1415J, a portion of the property is located within an unshaded Zone X an area determined to be outside the 0.2% annual chance flood hazard.

Finding #2: The proposed map amendment will not impact safety from fire and other danger because even though the property is located in the WUI it is not forested and is located less than 4.5 road miles from the nearest fire station within the West Valley Fire District, is located on a U.S. Highway and not located within the 100 year floodplain.

2. Promote public health, public safety, and general welfare;

As previously stated, the subject property is located within the West Valley Fire District. The West Valley Fire Department would respond in the event of a fire or medical emergency and the Flathead County Sheriff's Department provides police services to the subject property. Highway 93 and Scenic Ridge Road appear adequate to provide ingress and egress for emergency vehicles which would help to ensure adequate public health and safety.

I-1H is defined as a district to provide areas for light industrial uses and service uses the typically do not create objectionable by-products (such as dirt, noise, glare, heat, odors some etc.), as such the proposal is not anticipated to adversely impact public health, safety or general welfare.

Finding #3: The proposed zoning map amendment would likely have minimal impact on public health, public safety and general welfare because the property is served by the West Valley Fire Department, Flathead County Sheriff and future development would comply with the allowed uses in an I-1H zone which do not produce objectionable by-products per the definition.

3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Currently primary access to the property is off Scenic Ridge Road with an additional access off Highway 93. Scenic Ridge Road is a two-lane local gravel road with a 60 foot easement. The most recent traffic counts for Scenic Ridge Road indicate an average of 78 at Highway 93 and the average daily traffic along Highway 93 near the subject property is 17,001.

Using standard trip generation, residential uses typically generate 10 vehicle trips per dwelling for single family residential. The property is approximately 11.8 acres in size and the minimum lot size for the current SAG-10 zone is 10 acres. Therefore, approximately 1 single family homes could be constructed on the subject, which would generate 10 average daily trips.

According to the ITE Trip Generation Manual 5th Edition “General Light Industrial” generates approximately 51.80 average daily trips per acre for a weekday. The subject property is approximately 11.8 acres and has the potential to generate 611 average daily trips. The average daily trips for light industrial would be much greater than if the property was developed with residential under the current zoning. If the applicant develops a subdivision on the property that would increase traffic by more than 400 average daily trips than a traffic impact analysis would be required.

The proposed zoning has the potential to increase traffic by 783% on Scenic Ridge Road. The applicant states traffic for the industrial use will be via Highway 93 through an existing approach permit. So it is likely that a majority of the traffic generated would be via Highway 93 not Scenic Ridge Road. If all the industrial traffic uses the existing highway access the proposed zoning has the potential to increase traffic by 3.6%. This has the potential to impact traffic flow at the approach for the property along the highway. However comments from MDT state, “The owner’s representative has contacted MDT about the proposal. A review of the right of way/access control documents did verify that the existing access was granted as a private approach which could allow for the proposed change in use. As this will be a change in use of an existing access then the owner will need to obtain a new updated approach permit from MDT.”

The Flathead County Road Department comment indicates no concerns regarding this proposal.

Finding #4: The proposed amendment would appear to facilitate the adequate provision of transportation because the County Road and Bridge Department comments indicates no concerns with the proposal, the majority of the traffic would likely utilize an existing approach onto Highway 93 and the owner will need to obtain a new updated approach permit from MDT.

Comments from Environmental Health states, “The proposed use of the property may require additional septic capacity for the proposed RV sales business. The property was not subject to review under the Sanitation in Subdivisions Act. Please contact Environmental Health Services regarding

required water and wastewater treatment facilities.” Further division of land and/or new uses will likely require review under the Sanitation and Subdivision Act through the Flathead City-County Health Department and the Montana Department of Environmental Quality.

The application states, “The propose use on the subject tract – RV sales- requires both water supply and sewage treatment/disposal for the sales and service staff and uses. The new well would be drilled by a licensed well driller in conformance with Montana State regulations for water supply wells. A permit from the Flathead County Sanitarians Office would be required for the septic system.”

While the subject property is located within the Whitefish High and Whitefish Elementary School Districts, however the proposed industrial use would likely not generate any school children. The zoning map amendment would not impact the existing park system because minimal demand on existing parks would be created.

Finding #5: The proposed amendment would facilitate the adequate provision of water, sewerage, schools, parks, and other public requirements because the further division of land or a change of use would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality and there would be minimal impact on schools and parks as a result of this proposal since the request is for an industrial zone.

iii. In evaluating the proposed map amendment, consideration shall be given to:

1. The reasonable provision of adequate light and air;

The minimum lot area for the proposed I-1H zone is 7,500 square feet and the minimum lot area for the existing SAG-10 zone is 10 acres. The density allowed within the I-1H zone is greater than the density allowed within the current SAG-10 zone. The maximum building height within the proposed I-1H zone is 40 feet and the maximum height for the existing SAG-10 zone is 35 feet. The permitted lot coverage is 20% for the SAG-10 zone and permitted lot coverage is not applicable in the I-1H zone. More of the acreage could be covered by structure under the proposed I-1H zone because there is no applicable lot coverage in the I-1H zone.

The bulk and dimensional requirements in the I-1H zone require a setback from the boundary line of 20 feet for the front, rear and side-corner and 10 feet from the side for the structure. There is not a separate setback requirement for accessory structures as is the case in the existing zone. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials. The bulk and dimensional requirements for the I-1H designation have been established to provide for a reasonable provision of light and air. The application states, “In general, the I-1H zoning requirements will result in the provision of equal or better air & light than the existing SAG-10 zoning requirements.”

The I-1H district requires additional design standards including a 100 foot setback from the highway for a lot with direct access from the highway as this property has. The I-1H also requires a 25 foot landscape buffer along the highway and 15 feet from county roads. These design standards serve to provide adequate light and air.

Finding #6: The proposed zoning map amendment would appear to provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional requirements within the proposed I-1H designation, including greater setback requirements for lots with direct access to a highway and landscape buffers.

2. The effect on motorized and non-motorized transportation systems;

Currently primary access to the property is off Scenic Ridge Road with an additional access off Highway 93. Scenic Ridge Road is a two-lane local gravel road with a 60 foot easement. The most recent traffic counts for Scenic Ridge Road indicate an average 78 at Highway 93 and the average daily traffic along Highway 93 near the subject property is 17,001.

Using standard trip generation, residential uses typically generate 10 vehicle trips per dwelling for single family residential. The property is approximately 11.8 acres in size and the minimum lot size for the current SAG-10 zone is 10 acres. Therefore, approximately 1 single family homes could be constructed on the subject, which would generate 10 average daily trips.

According to the ITE Trip Generation Manual 5th Edition “General Light Industrial” generates approximately 51.80 average daily trips per acre for a weekday. The subject property is approximately 11.8 acres and has the potential to generate 611 average daily trips. The average daily trips for light industrial would be much greater than if the property was developed with residential under the current zoning. If the applicant develops a subdivision on the property that would increase traffic by more than 400 average daily trips then a traffic impact analysis would be required.

The proposed zoning has the potential to increase traffic by 783% on Scenic Ridge Road. The applicant states traffic for the industrial use will be via Highway 93 through an existing approach permit. So it is likely that a majority of the traffic generated would be via Highway 93 not Scenic Ridge Road. If all the industrial traffic uses the existing highway access the proposed zoning has the potential to increase traffic by 3.6%. This has the potential to impact traffic flow at the approach for the property along the highway. However comments from MDT state, “The owner’s representative has contacted MDT about the proposal. A review of the right of way/access control documents did verify that the existing access was granted as a private approach which could allow for the proposed change in use. As this will be a change in use of an existing access then the owner will need to obtain a new updated approach permit from MDT.”

The Flathead County Road Department comment indicates no concerns regarding this proposal.

The Flathead County Trails Plan identifies Highway 93 as a proposed connector bike/pedestrian trail. If the applicant develops the property through subdivision a pedestrian easement would likely be required to accommodate a future bike/pedestrian trail. Additional comment from the applicant states, “The owners of the property are willing to consider granting easement(s) along either Highway 93 or Scenic Ridge Road for a pedestrian/bike path in the future if plans were to materialize.”

Finding #7: Effects on motorized and non-motorized transportation systems will be minimal because the County Road and Bridge Department comments indicate no concerns with the proposal, the majority of the traffic would likely utilize an existing approach onto Highway 93 and the owner will need to obtain a new updated approach permit from MDT additionally there appears to be adequate space for a future bike/pedestrian easement along Highway 93.

3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

The subject property is located about midway between the cities of Kalispell and Whitefish. The subject property is located approximately 2 miles north of the northernmost extent of the Kalispell Growth Policy Map, annexation policy boundary and the Kalispell City limits. The property is approximately 3.5 south of the southernmost extent of the Whitefish Growth Policy Map and about 5 miles south of the Whitefish city limits.

The City of Kalispell comments do not specifically address the compatibility with the urban growth of Kalispell instead the comments discuss, the creation of the Highway 93 North Zoning District, spot zoning, access on to the highway and the existing commercial and industrial inventory.

Finding #8: Consideration has been given to the compatibility of the proposed zoning map amendment to the City of Kalispell’s urban growth and it has been determined that the map amendment is located beyond the northern extent of Kalispell’s urban growth, as shown on the Kalispell Growth Policy Future Land Use Map, and therefore there is no plan with which to be compatible and comments from Kalispell does not specifically address compatibility with the urban growth of Kalispell.

Finding #9: Consideration has been given to the compatibility of the proposed zoning map amendment to the City of Whitefish’s urban growth and it has been determined the map amendment is located beyond the southern extent of Whitefish’s urban growth, as shown on the Whitefish Growth Policy Future Land Use Map, and therefore there is no plan with which to be compatible.

4. The character of the district(s) and its peculiar suitability for particular uses;

The character of the district and its peculiar suitability for particular uses can best be addressed using the “three part test” established for spot zoning by legal precedent in the case of *Little v. Board of County Commissioners*. Spot zoning is described as a provision of a general plan (i.e. Growth Policy,

Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application and the character of the district and its peculiar suitability for particular uses.

i. The zoning allows a use that differs significantly from the prevailing use in the area.

Staff looked at the zoning within a half mile of the subject property and along further north and south along the highway. The character of the Highway 93 corridor is a mixture of suburban agricultural, agricultural, highway industrial, commercial and residential. To the east of the property is the Flathead County Landfill and several commercial businesses and are zoned B-2 and SAG-10.

To the north, south and east the zoning is also SAG-10. Further to the south along the highway is AG-40 and I-1H zoning, followed by SAG-5, B-2 and B-3 zoning less than 2 miles to the south. (The B-2 and B-3 zoning are located across the highway from each other). Further to the north along the highway are SAG-5, AG-40, R-2 and some B-2 zoning. The B-2 is located on both sides of the highway approximately 2.5 miles to the north.

According to the application, “The manager of the Flathead County Landfill is aware of this proposed zone change and indicated that it is highly probable that he would offer comments in support of the proposed zone change similar to other letters of support written previously for other nearby zone changes after he reviews the formal application and staff report.” Comments from the Flathead County Waste District indicate no negative impacts at this time for the zoning request.

The proposed I-1H zoning would be compatible with the character of the district and would generally allow for uses that do not differ from uses that prevail in the area.

ii. The zoning applies to a small area or benefits a small number of separate landowners.

The zoning map amendment would apply to one tract of land which is owned by one landowner. Using standard ArcGIS software staff was able to determine the subject property is located within a SAG-10 district approximately 4,051.0 acres in size. Across the highway from the subject property there are B-2 districts 7.0 and 16.0 acres in size. There is I-1H zoning to the southwest of the property approximately 11.0 acres in size and to the west of the subject property is a SAG-10 district approximately 39.0 acres in size. Also to the west is an R-1 zoning district approximately 88.0 acres. To the northwest of the subject property is a SAG-5 district of approximately 283.0 acres and to the north is a R-1 zone that is approximately 359.0 acres. Although the property is 11.8 acres in size, the new I-1H zoning district would be similar in size to the existing B-2

districts to the west and the I-1H to the south and would therefore not be applied to small area relative to other zoning districts in the vicinity.

iii. *The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.*

According to comments from the City of Kalispell state, “1. The Highway 93 North zoning district, was specifically enacted by the property owners in the middle 1990’s to avoid the spread of commercial and industrial development along US 93. This effort is at the heart of protecting our scenic corridors along highways (note the property is located on Scenic Ridge Road), a view championed by greater community. Rezoning the subject property I-1 would take all future development control away from the county, which could lead to more strip commercial and industrial development.”

The I-1H district requires additional design standards including a 100 foot setback from the highway for a lot with direct access from the highway. The I-1H also requires a 25 foot landscape buffer along the highway and 15 feet from county roads and signage is required to be no closer than 50 feet from public right-of-way. Additionally overhead doors and loading bays shall not be placed facing the highway. These design standards serve to limit the impact of the I-1H zoning on the surrounding landowners and the general public.

As previously stated property to the southwest is zoned I-1H and would allow for similar uses to what is allowed within the proposed zoning.

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

Finding #10: The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because design standards serve to limit the impact of the I-1H zoning on the surrounding landowners and the general public, and although the property is 11.8 acres in size, the new I-1H zoning district would be similar in size to the existing B-2 districts to the west and the I-1H district to the south.

5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

Staff looked at the zoning within a half mile of the subject property and along the Highway 93 corridor when reviewing the existing buildings and the appropriate use of land. The character of the Highway 93 corridor is a mixture of suburban agricultural, agricultural, highway industrial, commercial and residential. The property is located along U.S. Highway 93 to the east of the Flathead County Landfill and several commercial businesses which are zoned B-2 and SAG-10.

To the north, south and east the zoning is also SAG-10. Further to the south along the highway is AG-40 and I-1H zoning, followed by SAG-5, B-2 and B-3 zoning all less than 2 miles to the south. Further to the north along the highway is SAG-5, AG-40, R-2 and some B-2. The B-2 is located on both sides of the highway approximately 2.5 miles to the north. The proposed zone change would likely conserve the value of buildings and encourage the most appropriate use of land throughout the jurisdictional area.

Finding #11: This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this location because the I-1H designation allows for similar uses to the existing uses on the nearby I-1H the property is located across the highway from the Flathead County Landfill and the area already contains a variety of uses.

iv. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

The subject property is located about midway between the cities of Kalispell and Whitefish. The subject property is located approximately 2 miles north of the northernmost extend of the Kalispell Growth Policy Map, annexation policy boundary and the Kalispell City limits. The property is approximately 3.5 south of the southernmost extend of the Whitefish Growth Policy Map and 5.5 miles south of the Whitefish city limits. The City of Whitefish Planning Department was sent an agency referral but has yet to provide comment on this proposal and the City of Kalispell comment does not address compatibility with the zoning ordinance of the City.

Finding #12: Consideration has been given to the City of Kalispell's growth plan and zoning ordinance, however it is not possible for the proposed zoning map amendment to be compatible with zoning ordinance of Kalispell because it is outside the city limits and outside the plan area, therefore no documents exist that would provide guidance on compatibility.

Finding #13: Consideration has been given to the City of Whitefish's growth plan and zoning ordinance, however it is not possible for the proposed zoning map amendment to be compatible with zoning ordinance of Whitefish because it is outside the city limits and outside the plan area, therefore no documents exist that would provide guidance.

V. SUMMARY OF FINDINGS

- 1) The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text generally support the request, the property is across the highway from the County Landfill and within the 1,320 foot buffer, is located between the cities of Whitefish and Kalispell along Highway 93, the I-1H zone requires greater setbacks for properties located along a highway, landscape buffering and other design criteria to minimize visual impacts and is not located within in an environmentally sensitive area and not located next to a school.

- 2) The proposed map amendment will not impact safety from fire and other danger because even though the property is located in the WUI it is not forested and is located less than 4.5 road miles from the nearest fire station within the West Valley Fire District, is located on a U.S. Highway and not located within the 100 year floodplain.
- 3) The proposed zoning map amendment would likely have minimal impact on public health, public safety and general welfare because the property is served by the West Valley Fire Department, Flathead County Sheriff and future development would comply with the allowed uses in an I-1H zone which do not produce objectionable by-products per the definition.
- 4) The proposed amendment would appear to facilitate the adequate provision of transportation because the County Road and Bridge Department comments indicates no concerns with the proposal, the majority of the traffic would likely utilize an existing approach onto Highway 93 and the owner will need to obtain a new updated approach permit from MDT.
- 5) The proposed amendment would facilitate the adequate provision of water, sewerage, schools, parks, and other public requirements because the further division of land or a change of use would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality and there would be minimal impact on schools and parks as a result of this proposal since the request is for an industrial zone.
- 6) The proposed zoning map amendment would appear to provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional requirements within the proposed I-1H designation, including greater setback requirements for lots with direct access to a highway and landscape buffers.
- 7) Effects on motorized and non-motorized transportation systems will be minimal because the County Road and Bridge Department comments indicate no concerns with the proposal, the majority of the traffic would likely utilize an existing approach onto Highway 93 and the owner will need to obtain a new updated approach permit from MDT additionally there appears to be adequate space for a future bike/pedestrian easement along Highway 93.
- 8) Consideration has been given to the compatibility of the proposed zoning map amendment to the City of Kalispell's urban growth and it has been determined that the map amendment is located beyond the northern extent of Kalispell's urban growth, as shown on the Kalispell Growth Policy Future Land Use Map, and therefore there is no plan with which to be compatible and comments from Kalispell does not specifically address compatibility with the urban growth of Kalispell.
- 9) Consideration has been given to the compatibility of the proposed zoning map amendment to the City of Whitefish's urban growth and it has been determined the map amendment is located beyond the southern extent of Whitefish's urban growth, as shown on the Whitefish Growth Policy Future Land Use Map, and therefore there is no plan with which to be compatible.

- 10) The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because design standards serve to limit the impact of the I-1H zoning on the surrounding landowners and the general public, and although the property is 11.8 acres in size, the new I-1H zoning district would be similar in size to the existing B-2 districts to the west and the I-1H district to the south.
- 11) This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this location because the I-1H designation allows for similar uses to the existing uses on the nearby I-1H the property is located across the highway from the Flathead County Landfill and the area already contains a variety of uses.
- 12) Consideration has been given to the City of Kalispell's growth plan and zoning ordinance, however it is not possible for the proposed zoning map amendment to be compatible with zoning ordinance of Kalispell because it is outside the city limits and outside the plan area, therefore no documents exist that would provide guidance on compatibility.
- 13) Consideration has been given to the City of Whitefish's growth plan and zoning ordinance, however it is not possible for the proposed zoning map amendment to be compatible with zoning ordinance of Whitefish because it is outside the city limits and outside the plan area, therefore no documents exist that would provide guidance.

VI. CONCLUSION

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with most of the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: EKM